IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

O.P.No.21249 of 1998(D)

PETITIONERS:-
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1. K.SIVADASAN NAIR,
   SIVASADANAM,
   ARANMULA, PATHANAMTHITTA.

2. C.P.MOOSAMKUTTY,
   EX. M.L.A, KAMBIL,
   KOLACHERY, KANNUR DISTRICT.

BY ADV. SRI.V.G. ARUN

RESPONDENTS:-
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1. THE STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
   TRIVANDRUM.

2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
   TRIVANDRUM.

3. THE KERALA STATE CO-OPERATIVE AGRICULTURAL
   AND RURAL DEVELOPMENT BANK LTD.,
   TRIVANDRUM,
   REPRESENTED BY ITS MANAGING DIRECTOR.

R1 & R2 BY SPECIAL GOVERNMENT PLEADER SMT.A.G.ANEETHA.
R3 BY ADV.SRI.GEORGE POONTHOTTAM.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - COPY OF GOVERNMENT NOTIFICATION DATED 9.6.1997.

EXT.P2 - COPY OF JUDGMENT IN O.P.NO.14313 OF 1997 DATED 16.12.1997 OF THE HIGH COURT OF KERALA.

EXT.P3 - COPY OF JUDGMENT IN W.A.NO.248 OF 1998 DATED 23.9.1998.

EXT.P4 - COPY OF NOTICE ISSUED BY THE REGISTRAR DATED 25.9.1998.

EXT.P5 - COPY OF NOTICE ISSUED BY THE REGISTRAR DATED 25.9.1998 TO THE 2ND PETITIONER.

EXT.P6 - COPY OF NOTICE DATED 22.10.1998 ISSUED BY THE REGISTRAR.

EXT.P7 - COPY OF EXPLANATION BY THE FIRST PETITIONER DATED 20.10.1998.

EXT.P8 - COPY OF EXPLANATION BY THE 2ND PETITIONER DATED 20.10.1998.

EXT.P9 - COPY OF GOVERNMENT NOTIFICATION NO.G.O.(P).96/98/CO-OP. DATED 21.5.1998.

RESPONDENT'S EXHIBIT:-

EXT.R1(a) - TRUE COPY OF THE ORDER DATED 16.10.96 OF THE KERALA PUBLIC MEN'S CORRUPTION (INVESTIGATION AND INQUIRIES) COMMISSION.

- TRUE COPY -

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.21249 of 1998

Dated, this the 11th day of October, 2007

JUDGMENT

H.L.Dattu, C.J.

Petitioners are elected members of the Board of Directors of the third respondent Co-operative Bank. The first petitioner was elected as its President and the second petitioner was elected as its Vice President in the elections held on 2.3.1996.

2. While they were functioning as President and Vice President of the third respondent Bank, the Registrar of Co-operative Societies has initiated proceedings by issuing a notice under Rule 44(5) of the Kerala Co-operative Societies Rules, 1969 ('the Rules' for short), inter alia, directing the petitioners to show cause why they should not be declared to be disqualified as President and Vice President of the third respondent Bank.

3. After receipt of the show cause notice, the petitioners had filed their objections.

4. Even before the authorities could pass any orders on the objections so filed to the show cause notice issued, the petitioners have approached this Court in O.P.No.21249 of 1998.

5. This Court while entertaining the writ petition had granted an interim order of stay, staying all further proceedings pursuant to the notice issued by the Registrar of Co-operative Societies under Rule 44(5) of the Rules dated 25.9.1998.

6. The respondents have not filed any application either for modification/for vacating the interim order granted earlier.

7. After nearly ten years, the matter is coming up for hearing before this Court.

8. Sri.V.G.Arun, learned counsel appearing for the petitioners, would submit that by S.R.O.No.142/2004 dated 7th February, 2004 the State Government has amended the Kerala Co-operative Societies Rules, 1969 by Kerala Co-operative Societies (Amendment) Rules, 2004 and the said Rules have come into force from the date of issuance of the notification, i.e., with effect from 13th February, 2004. By the said Rules, the State Government has omitted sub-rules (4), (5) and (6) of Rule 44 of the Kerala Co-operative Societies Rules, 1969.

9. In view of the omission of the aforesaid Rules the learned counsel would submit that the Registrar of Co-operative Societies should not be permitted to continue with the proceedings.

10. The learned Government Pleader appearing for the respondents submits that there is no saving clause in the Amendment Rules of 2004.

11. The second respondent has initiated proceedings against the petitioners in exercise of his powers under Rule 44(4) and (5) of the Rules. Since the Rules itself have now been omitted and since there is no saving clause, in our view, at this length of time, no useful purpose would be served in permitting the second respondent to continue with further proceedings against the petitioners. In view of the above, the following:

Order

i) Original petition is allowed in part.

ii) Since Rule 44(4) itself is omitted by the Amendment Rules of 2004, the first relief has become infructuous as on today.

iii) Since the provisions under which the proceedings had been initiated against the petitioners are now been omitted, the show cause notice issued by the second respondent dated 25.9.1998 requires to be quashed and it is accordingly quashed.

iv) Consequently, C.M.P.No.37418 of 1998 is closed.

Ordered accordingly.

(**H.L.DATTU**)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns/DK.